

The regular monthly meeting of the City Planning Board was held on August 18, 2010 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Foss (who presided as Chair Pro Tempore), Dolcino, Gross, Meyer, and Shurtleff (City Council representative). Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as were Messrs. Roberge and Mack of the City Engineering Division.

At 7:03 PM a quorum was present, and the Chair Pro Tempore called the meeting to order.

APPLICATIONS

Minor Subdivisions

1. Application by **R.J. Moreau Communities LLC and the Derosa Trust** for approval of a subdivision and re-subdivision of property located on **Bog Road and Kyle Road. (#2010-33)**

Determination of Completeness

Mr. Henninger explained this proposal to subdivide the convertible land from the Vineyards Condominium and combine it with a remnant parcel from the Sandwood Crossing Subdivision located off Kyle Road.

He reported that this application was complete and ready for public hearing.

Mr. Gross moved and Mr. Shurtleff seconded that the Planning Board determine this application to be complete and open the public hearing. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to subdivide the convertible land from the Vineyards Condominium and combine it with a remnant parcel from the Sandwood Crossing Subdivision located off Kyle Road. He reported that the Vineyards property will be reduced in size from 34.431 acres to 25.680 acres, and a buffer yard will need to be provided on the north side of the Vineyards Condominium and sufficient buildable land provided to support the 125 units permitted at the Vineyards Planned Unit Development. No new development will result from this subdivision.

He reported that the applicants had requested a waiver to show several sheets of the subdivision plan at a scale of 1"=100' and City staff recommended approval of the request due to the large size of the Derosa Trust parcel and the Vineyards property.

He reported that the existing gate on Cabernet Drive installed by the Vineyards Condominium Association must be relocated within the boundary of the condominium or removed.

He reported that the proposed perimeter buffer yard for the north side of the Vineyard has been cleared and needs to be re-vegetated. A landscape plan for this buffer area with a planting schedule is needed. If the buffer plantings cannot be completed prior to the plat being recorded, this improvement would need to be secured with a performance guarantee.

He reported that the cleared area north of the Vineyards will be separated from this development. This area will also need to be re-graded and re-vegetated. A plan for the restoration and a schedule for the restoration work are needed. If this area cannot be restored prior to the plat being recorded, this improvement needs to be secured with a performance guarantee.

Mr. Henninger reported that the applicant proposes to seed the area and plant fourteen trees with the new buffer yard along the north side of the Vineyards Condominium. Pursuant to Section 28-4-8(f), Perimeter Buffer Required (for a PUD), "the Planning Board may require landscape materials to be integrated with the existing vegetation in order to provide effective screening on a year-round basis between the PUD and adjacent land uses". There is no existing vegetation in the perimeter buffer and the Board may wish to require additional replanting along the buffer.

He reported that an easement for access over the driveway from the Vineyards Condominium Association to Kyle Road needed to be provided for residents of the condominium.

He reported that there are conflicting existing surveys for the Derosa Trust property. The applicant has advised that they intend to authorize a new survey for the property if they are able to obtain conditional subdivision approval.

Craig Francisco from Bedford Design Consultants was present on behalf of the applicant to answer questions from the Board.

There was no one else who wished to speak for or against this application and the Chair Pro Tempore declared the hearing closed at 7:22 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board grant a waiver to Section 8.04(2)(a)(ii) of the City's Subdivision Regulations to allow three of the four plat sheets to be submitted at a scale of 1" = 100' instead of 1" = 50'. Mr. Shurtleff seconded. Motion carried.

Mr. Gross moved that the Planning Board grant conditional final subdivision approval for the "Resubdivision Plan prepared for R.J. Moreau Communities, L.L.C. & Derosa Trust" subject to the following standard and special conditions:

Standard Conditions

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
 - a. An access easement for the Vineyards Condominium from the new lot line northerly along Cabernet Drive to Kyle Road for the owners of the Vineyards Condominium.

Special Conditions

3. The applicant shall submit a planting plan and planting schedule for the 50-foot landscaped buffer yard to be created on the north side of the newly revised Vineyards Planned Unit Development lot acceptable to the Clerk of the Board. If the buffer plantings cannot be completed prior to the plat being recorded, this improvement shall be secured with a performance guarantee.
4. The cleared area north of the Vineyards PUD is being separated from this development. This area shall be re-graded and re-vegetated in a manner acceptable to the Clerk and the City Engineer. If this area cannot be restored prior to the plat being recorded, the approved restoration plan shall be secured with a performance guarantee.
5. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant will provide to the City Solicitor a financial guarantee for the perimeter landscaping and site restoration required as part of Conditions 2 & 3 above, in an amount approved by the City Engineer and in a form acceptable to the City Solicitor.
6. Prior to the final plat being signed by the Planning Board Chair and Clerk, the Derosa Trust property will be resurveyed to resolve the conflicting recorded boundary information for this property.

Mr. Shurtleff seconded.

Mr. Woodward discussed the issue of the unresolved lot line. The two conflicting surveys may vary the exact size of the proposed lots. Only the larger lot is in question. It appears to be a matter of disagreement between the two existing surveys.

Mr. Gross added to the motion that it is understood that, due to variation in survey results, the resulting acreage of the Derosa Trust property currently listed as 85.241 acres

may be more or less than that precise acreage, and upon submittal of the corrective survey the plat will be deemed amended.

Mr. Shurtleff agreed to the amendment. Motion as amended carried.

2. Application of **Madlyn F. Whipple and Una M. Folan** for approval of a subdivision and re-subdivision of property located at **240 and 246 Hopkinton Road. (#2010-34)**

Determination of Completeness

Ms. Hebert explained this proposal to adjust the lot line between the properties at 240 and 246 Hopkinton Road in order to annex 5,100 square feet from 246 Hopkinton Road to 240 Hopkinton Road.

She reported that this application was complete and ready for public hearing.

Mr. Gross moved and Mr. Shurtleff seconded that the Planning Board determine this application to be complete and open the public hearing. Motion carried.

Public Hearing

Ms. Hebert explained this proposal to adjust the lot line between the properties at 240 and 246 Hopkinton Road in order to annex 5,100 square feet from 246 Hopkinton Road to 240 Hopkinton Road.

She reported that the applicants had requested a waiver to Section 8.01 (2)(a)(ii) of the Subdivision Regulations to allow the subdivision plan to be submitted at a scale of 1" = 30' instead of 1" = 50' as required. The applicant had also requested a waiver to Section 8.02(2)(a)(i) & (v) which requires the contour lines at 2-foot intervals and the wetland locations to be included on the plan. Both parcels contain existing residential structures and there is no new construction being proposed as part of the application.

Madlyn Whipple, Una Folan, and Mike Aiken were present as the property owners to answer questions from the Board.

Mr. Aiken reported that Ms. Whipple was considering replacing her existing well with a drilled well at a location farther from the property line, and until that time they will provide an easement for the encroachment of the protective well radius with a provision for the removal of that easement when the new well is drilled as the easement will then be moot.

There was no one else who wished to speak for or against this application and the Chair Pro Tempore declared the hearing closed at 7:36 PM.

Deliberations and Action on Application

Mr. Shurtleff moved that the Planning Board grant a waiver to Section 8.04 (2)(a)(ii) of the City's Subdivision Regulations to allow the subdivision plat to be submitted at a scale of 1" = 60' and 1"=200' instead of 1"=50'. Mr. Gross seconded. Motion carried.

Mr. Shurtleff moved that the Planning Board grant a waiver to Section 8.02(2)(a)(i) & 8.02(2)(a)(v) of the City's Subdivision Regulations to not include the all of the wetlands locations and contours at a two foot intervals. Ms. Dolcino seconded. Motion carried.

Mr. Shurtleff moved that the Planning Board grant conditional final subdivision approval for the "Lot Line Adjustment Plan of Una M. Folan and Madlyn F. Whipple" as prepared by H.H. Amsden & Sons subject to the following standard conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City Staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
 - a. Well easement from the owners of parcel 98-2-19, for the benefit of parcel 98-2-20, for the portion of the 75-foot protective well radius that crosses onto parcel 98-2-19.

Mr. Gross seconded, and moved to amend condition 2.a by adding the following phrase, "provided that if the existing well is abandoned, the easement shall abate upon written certification of the owners of parcel 98-2-20, who shall also record the written certification at the Merrimack County Registry of Deeds."

Mr. Shurtleff agreed to the amendment. Motion carried.

Minor Site Plan and Conditional Use Permit Applications

3. Application by **David Caron** to modify a condition of a previously approved site plan of property located at **21 Village Street. (#2008-23)**

Determination of Completeness

Ms. Hebert explained this request for relief from a previous Planning Board site plan approval condition that requires the reconstruction of an existing sewer line in order to upgrade the service from a four inch line to a six inch line.

She reported that this application was complete and ready for public hearing.

Mr. Gross moved and Ms. Meyer seconded that the Planning Board determine this application to be complete and open the public hearing. Motion carried.

Public Hearing

Ms. Hebert explained this request for relief from a previous Planning Board site plan approval condition that requires the reconstruction of an existing sewer line to upgrade the service from a four inch line to a six inch line. She reported that the City requires a six inch service to all non-residential uses.

She explained that the applicant received site plan approval in May 2008 to convert the existing residential building to a barber school on the first floor and to retain a two bedroom apartment on the second floor. The site plan included the construction of a new parking area and associated drainage and landscape improvements. The parking lot was designed to provide enough parking for a future building with approximately 2,241 square feet on the first floor and a two bedroom apartment on the second floor. The Planning Board included a condition requiring that a six inch sewer line be installed within five years of the approval, or when Village Street is reconstructed, or upon expansion of the barber studio, whichever occurred first.

She explained that in March 2010, the applicant applied for site plan approval to construct the foundation for the new building. The application was reviewed and approved by the Technical Review Committee, and the foundation has been installed and was backfilled for interim use as a court yard.

She explained that in May 2010, the applicant received approval from the Technical Review Committee to construct a new 4,388 square foot building at 21 Village Street. The American Barber School would continue to be housed on the first floor and there would be a two bedroom apartment on the second floor, along with storage area for the barber school. As a condition of approval for the proposed building expansion, the applicant was required to post a financial guarantee for the reconstruction of the six inch sewer line as well as a condition that no certificate of occupancy for the building would be issued until the six inch sewer line had been installed.

She reported that Village Street is scheduled to be reconstructed as part of the Route 3 corridor improvements in 2014.

Ms. Hebert reported that the City Engineer has recommended that the Planning Board uphold the condition of approval requiring the installation of the six inch sewer line. The applicant has submitted a letter explaining that the construction of the sewer line presents a financial hardship. He would like to be able to expand his business prior to the installation of the six inch line, and is asking the Board to revise the condition to require the installation of the six inch sewer service at the time Village Street is reconstructed or prior to the sale of his property, whichever comes first.

She reported that the Planning Division recommended that the Planning Board consider allowing the applicant to defer the installation of the six inch sewer service under the conditions that a financial guarantee would be provided for the construction of the six inch sewer service, an agreement would be recorded that would require the upgrading

of the sewer line at the time Village Street is reconstructed, no building permits would be issued for the proposed renovations and expansion of the second floor apartment until the six inch sewer service was installed, any change of use of the premises from the barber school would require that the six-inch sewer connection be immediately installed, and the agreement would be binding upon the present owner as well as his successors and assigns.

David Caron was present as applicant and presented a letter from his plumber and an estimate from the contractor relative to the requirement for replacing the sewer line.

He explained that since the Board's original approval he has decided to expand his business and that would trigger the condition that the sewer line be replaced by a six inch line. He reported that the City ran a camera through the line and found it to be in great shape. He was not against putting in the pipe and would be happy to put it in when the City reconstructed the road. His property is only a half acre and he felt there was nothing he could do on that lot that would overuse the current service. The cost of this extension was too much of a burden for him to absorb at this time. He felt that whatever upgrades he constructed now would likely be replaced at the time the City upgraded Village Street in 2014. He would like the condition deferred until Village Street is rebuilt as most of the cost is related to digging up the street.

Ms. Meyer asked what would happen if the system failed before the six inch pipe was constructed. Mr. Caron answered that the sewer would back up into his building and it would then be his responsibility.

Edward Roberge, City Engineer, explained that if the six inch pipe were installed today, it would not be removed in four years unless there was a problem with it. He did appreciate the difficulty of working in the public right-of-way for a private project. He explained the concern Engineering had was how to best coordinate this improvement. If the Planning Board decided to defer this until 2014, it would be important to have the service built on the private property now. Costs will likely be different four years from now. He also asked that the Planning Board require an advance cash deposit rather than a bond or letter of credit. He felt the requirement for six inch pipe was a good requirement. It is a good standard.

Mr. Caron again spoke and indicated he would be happy to run a six inch line to the property line parallel to the four inch line so that whenever the City project took place, they would not have to wait for him. He would like to keep the four inch line because it is working well.

There was no one else who wished to speak for or against this application and the Chair Pro Tempore declared the hearing closed at 8:21 PM.

Deliberations and Action on Application

Mr. Gross felt that the Planning Board needed to adopt the staff's recommendation with changes, including that this action should not create any kind of precedent. However,

he felt there were good reasons for an exception in this case, including the cost of digging up the concrete base of Village Street as well as the fact that it will excavated again in the near future. There has been no testimony that has suggested that allowing completion of the apartment would jeopardize the sanitary operation of the property. Also, Mr. Caron expressed a willingness to construct the six inch line to the property line in order to facilitate public construction when Village Street is completed. That offer sounded like it bridged a whole lot of issues. He suggested requiring that Mr. Caron construct a six inch line from the building to the property line.

Ms. Dolcino suggested that he be required to then connect to the municipal system no later than when Village Street is upgraded, when Mr. Caron sells his building, or if there is any change of use of the premises which intensifies demand for sewer capacity.

Mr. Gross moved that the Planning Board amend Special Condition # 6 of the May 21, 2008 Planning Board Minor Site Plan approval to permit the change of use and related site improvement to permit a barber shop and a residential apartment at 21 Village Street, and Special Condition # 5 and 6 of the May 6, 2010 Technical Review Committee approval of a Minor Site Plan Application to construct a new 4,388 square foot building to read as follows:

1. Prior to the issuance of a Certificate of Approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site, an agreement with the City, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, shall be provided to the Planning Division, relative to the deferred installation of the six-inch sanitary sewer connection to the premises, and containing the following provisions:
 - a. The applicant shall construct a dead-end six inch sewer connection from the building to the property line ready for connection to the municipal sewer at the appropriate time.
 - b. The six-inch sewer connection from the property line to the municipal sewer shall be installed by the applicant at whichever occurs first: the time at which Village Street is rebuilt by the City or the sale of the property. However, should the existing four-inch sewer connection fail at any time prior to the reconstruction of Village Street, then the six-inch sewer connection shall be immediately installed and placed in service, including replacement to the sewer main within the City of Concord right-of-way.
 - c. Any change of use of the premises from the barber school to another use shall require the six-inch sewer connection be immediately installed and placed in service.
 - d. The agreement shall be binding upon the present owner, as well as his successors, and assigns.

2. Prior to the issuance of a Certificate of Approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for the installation of the six-inch sewer connection in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

Mr. Shurtleff seconded. Motion carried.

Major Site Plan Applications

4. Application of **Banks Chevrolet** for a site plan of property located at **137 Manchester Street**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. (#2010-31)

Determination of Completeness

Mr. Henninger explained this proposal to demolish six buildings consisting of a house and an automotive dealership, containing a total of 55,600 square feet and to construct a new car dealership containing a total of 93,528 square feet in a single building.

He reported that this application was complete and ready to set for public hearing on September 15, 2010.

Mr. Gross moved that the Planning Board determine this application to be complete and schedule it for public hearing on September 15, 2010. Ms. Meyer seconded. Motion carried.

5. Application of **Franklin Pierce Law Center Corporation** for a site plan of property located at **2 White Street**. (#2010-35)

Determination of Completeness

The Chair Pro Tempore noted that the applicant's agent had requested postponement of determination of completeness for this application until the September 15, 2010 meeting.

Mr. Gross moved that determination of completeness for this application be postponed to the Board's regular meeting on September 15, 2010. Mr. Shurtleff seconded. Motion carried.

6. Application by **Prolerized New England Company LLC** for a site plan of property located at **25 Sandquist Street**. (#2010-36)

Determination of Completeness

Mr. Henninger explained this proposal to pave and improve the storm drainage at an existing recycling yard located east of Hall Street next to the Merrimack River.

He reported that this application was complete and ready to set for public hearing at the Board's regular meeting on September 15, 2010.

Mr. Gross moved that the Planning Board determine this application to be complete and schedule it for public hearing on September 15, 2010. Ms. Meyer seconded. Motion carried.

7. Application by **St. Paul's School** at for approval of a site plan of property located on **Dunbarton Road. (#2010-29)**

Public Hearing

Ms. Hebert explained this proposal to remove an existing 9,025 square foot parking area containing 23 parking spaces, and replace it with a new 29,065 square foot parking area containing 55 parking spaces. The project also includes the construction of sidewalks connecting the new parking area to the adjacent buildings. The parking lot will be located off Dunbarton Road to the south of the Alumni Building.

She reported that the accessible parking spaces associated with the Alumni building do not lead to an accessible route to the building. However, the applicant has explained that the Alumni building does not have an accessible entrance and, when the building is retrofitted to provide an accessible entrance, the handicap parking spaces will be located in the vicinity of the proposed accessible entrance.

She reported that the parking lot will be surfaced with an asphaltic based pervious pavement to meet the Best Management Practices required by the NH Department of Environmental Services Alteration of Terrain Permit, but the access drive will be constructed with traditional pavement.

She reported that the site plan includes tree plantings within the parking lot and landscaped areas to screen the parking area from the adjacent buildings. St. Paul's School intends to illuminate the parking area with a lighting fixture of a similar style to that used throughout the campus.

Theodore Kupper from Provan and Lorber, Inc. was present on behalf of the applicant to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair Pro Tempore declared the hearing closed at 8:48 PM.

Deliberations and Action on Application
Deliberations and Action on Architectural Design Review

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for the Major Site Plan application of St. Paul's School as prepared by Provan & Lorber

Inc for the construction of the new Alumni Building parking lot. Ms. Meyer seconded. Motion carried.

Mrs. Gross moved that the Planning Board grant conditional site plan approval for the Major Site Plan application of St. Paul's School as prepared by Provan & Lorber Inc., subject to the following standard conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals shall be obtained for the on-site construction drawings and specifications from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following State permit shall be obtained and a copy provided to the Planning Division:
 - a. NH Department of Environmental Services Alteration of Terrain Permit (RSA 485-A:17)

Ms. Meyer seconded. Motion carried.

Architectural Design Review

8. Applications by the following for approval of a sign at the following location under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.

- **Holiday Inn** for one replacement freestanding sign at **172 North Main Street**

Public Hearing

Mr. Henninger explained that the Planning Board had tabled action at its July meeting on the application for a replacement freestanding sign to allow the applicant the opportunity to seek a variance from the Zoning Board of Adjustment for the height of the sign. The Board also expressed concern at that time relative to the design of the base of the sign. He reported that the applicant was not represented at the Design Review Committee but they are preparing revised plans and will be at the September 7, 2010, Design Review Committee meeting for review.

There was no one present on behalf of the applicant.

Mr. Gross moved to table action on this application and Mr. Shurtleff seconded. Motion carried.

REGULAR MEETING

Minutes

Mr. Gross moved approval of the minutes of the meeting of July 21, 2010, as submitted. Mr. Shurtleff seconded. Motion carried.

10. Further consideration of an application for approval of a development on which a public hearing has previously been held:

- a. Application by **Tropic Star Development on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, and Jean B. Chase** for approval of revisions to a previously approved site plan of property located at **155 and 157 Loudon Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(c), Driveway Separation Alternatives, of the Zoning Ordinance. (**#2009-04**)

Deliberations and Action on Application

Mr. Gross moved that further action on this application be deferred until the Board's regular meeting on September 15, 2010. He felt it would be important to have more members of the Board available for this discussion. Mr. Shurtleff seconded. Motion carried.

New Business

11. Request for an extension of the period of validity of the conditional approval of the Minor Site Plan Application of **Forest Street Realty (Concord Kia) at 94 Manchester Street**. (**#2002-05 & #2004-29**)

Mr. Woodward explained that the applicant's attorney had forwarded a request for an extension of the approval of this application seeking validity through August 26, 2011.

He reported that the Planning Board granted Major Site Plan approval to Forest Street Realty on April 17, 2002, for a building addition and outside sales and display area for an auto dealership at 94 Manchester Street. On November 19, 2003, the Board extended that approval until April 17, 2005. Subsequent to that action, Forest Street Realty filed a revised application that was considered by the Board on April 21, 2004, which created a two-phase development plan with each phase being valid for two years, starting at the time that permits were issued for Phase 1. Phase 1 permits were issued on August 26, 2004 for an expanded service area. The period of validity for Phase 2, which is for a new showroom and sales facility, began on August 26, 2006, and would have expired on August 26, 2008, but the Board granted a one year extension of Phase 2 through August 26, 2009.

A year ago, the Planning Board considered another request for a one-year extension through August 26, 2010. At that time, it was discovered that the Alteration of Terrain permit issued by NH Department of Environmental Services for the second phase had lapsed and the applicant sought to obtain a new permit. Therefore, the Board granted another one year extension subject to the receipt of an Alteration of Terrain permit from NHDES, and the requirement that all conditions of the original site plan approval shall remain in full force and effect.

He explained that any extensions of a final approval may be granted by the Board as a waiver of the Site Plan Review Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the site plan have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension and, after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no means of learning of the existence of the application and the pending change in their neighborhood.

He reported that at present there are no changes in zoning or other regulations which might otherwise warrant denial of an extension, and economic conditions have made it difficult for many projects to proceed. However, the Alteration of Terrain permit required as a condition of the last extension has not been received. The applicant has advised that an AOT permit has not been obtained out of concern that the permit would not be exercised in a timely manner due to the economy and, therefore, it would expire prior to being exercised. However, the AOT regulations provide for a period of validity of five years for a new AOT permit, and a one time renewal option for another five years.

The City's recent direct experience with AOT permitting for the Manchester Street improvement project suggests that Forest Street Realty may have to do significant redesign of its drainage system originally permitted under the State's former Site Specific Regulations.

Mr. Gross asked if there was anything stale about the action the Planning Board has taken on this application. Mr. Woodward responded that the Alteration of Terrain Permit would probably cause them to redesign their drainage plan.

Mr. Gross did not feel that it would be in the public interest to deny the request for extension.

Mr. Shurtleff moved to grant a waiver of the Site Plan Review Regulations for another one-year extension for Phase 2 of this application subject to receipt of an Alteration of Terrain permit from NH Department of Environmental Services, and indicate that all conditions of the original site plan approval shall remain in full force and effect. Mr. Gross seconded. Motion carried.

12. Review pursuant to RSA 674:54, Governmental Land Uses, of a proposal by the **Concord School District** for temporary use as the administrative offices of the District of the former Dewey School at **38 Liberty Street**.

Mr. Woodward explained that the Concord School District has advised the City that it intends to utilize Dewey School for its administrative offices on an interim basis to allow for its current offices in the former Morrill School to be demolished. This would constitute a change of use of the premises and as such is reviewable pursuant to RSA 674:54.

He explained that Dewey School has been closed for several years with the exception of an interim use by Walker School students while their school was being repaired. The introduction of the administrative offices of the school district to the building would change the use to a year-round office use inclusive of evening public meetings and the ancillary parking that goes with such uses.

He reported that the site has an existing parking lot along the easterly side of the lot which was used by the faculty and staff of Dewey School when it was open. In addition, there is a circular drive on the west side of the lot in front of the school on which visitor parking once occurred. The District also proposes to convert the former playground at the southeast corner of the site to a parking area. No changes are proposed to the existing building at this time.

He reported that the District had notified the abutters by mail several months ago of their intent, and also proposes to invite the neighbors to Dewey School on an evening in September to view the school as it is being organized for office use, and to be able to ask questions and raise concerns.

Ms. Meyer asked where their permanent offices will be since this is being proposed as temporary. Mr. Woodward responded that no definite decision has been made about a permanent location.

Ms. Meyer asked if this became permanent whether the Planning Board would have the opportunity to comment. Mr. Henninger suggested responding to the school district that it was appropriate for a temporary location, but if they decided to make it their permanent offices, the Board would expect to have an opportunity for further review.

Mr. Gross moved that the Planning Board not require a public hearing relative to the proposal to use the former Dewey School as the temporary offices of the Concord School District as the proposed use is only on an interim basis, the physical changes to the premises are minimal, the Concord School District has notified the abutters of the changes, and the District will be affording those abutters further opportunity to express their concerns. He further moved that the Planning Board ask to be kept informed regarding the District's plans for this property or any other permanent location for the administration offices. Mr. Shurtleff seconded. Motion carried.

Old Business

13. Further consideration of a hearing notice from the Pembroke Zoning Board relative to a proposed asphalt plant on **North Pembroke Road in Pembroke** by **Continental Paving** on the site of the former Concord Sand and Gravel and adjacent to the City's well field. This application has now been declared a Development of Regional Impact and is scheduled for hearing by the Pembroke ZBA on August 30, 2010.

Mr. Woodward explained that the City had been notified of a public hearing by the Pembroke Zoning Board of Adjustment for a Development of Regional Impact in conjunction with a request for a Special Exception by Continental Paving to permit an asphalt plant in the Town of Pembroke's R-3 Rural/Agricultural-Residential and Aquifer Conservation Zoning Districts, on property located at 773 to 793 North Pembroke Road. The site is the location of the gravel pit formerly owned and operated by Concord Sand & Gravel Company and the public hearing is scheduled for August 30, 2010.

He reported that last month the Concord Planning Board considered an abutter notice to the City from the Pembroke ZBA about a Special Exception request from Continental Paving adjacent to the City's wellfield. The Board voted to request that the Pembroke ZBA consider this matter as a Development of Regional Impact noting that the City's concerns went beyond those of being an abutting landowner and extended to the City's and the Region's land use, natural resources, transportation system, and economy. This action was critical at this stage despite the possible additional site plan approvals that may be necessary from both Pembroke and Concord as the Special Exception would establish the land use on this site.

He reported that the property encompassed approximately 200 acres in the Town of Pembroke, which was owned by Concord Sand & Gravel Company and had been used for mineral extraction purposes. The Concord Sand & Gravel operation also included a site in Concord, located off Route 106, which is connected to the property in Pembroke. Material extracted from the Pembroke site was trucked along a haul road, across the bridge then onto Route 106 in Concord.

He reported that Concord Sand & Gravel recently received approval to expand the mineral extraction and excavation operation in Pembroke. The property was subsequently sold to Continental Paving which currently operates an asphalt plant in Pembroke off Ricker Road. Continental Paving would like to build a new asphalt facility to consolidate its operation and avoid additional trucking.

Mr. Woodward reported that Concord Sand & Gravel still owns the property in Concord, but has conveyed an easement to Continental Paving to allow the continued use of the haul road into Concord. The Concord Sand & Gravel site in Concord is currently inactive, and the owners are marketing the property for redevelopment. Pembroke does not allow access to North Pembroke Road from the gravel pit, and the North Pembroke Road Bridge over the Soucook River would not be able to support the weight of the loaded trucks.

He reported that the proposed asphalt plant would encompass approximately six acres and would be located within close proximity to the City's Pembroke Well Fields. The site is also located in the City's wellhead protection area as defined by the New Hampshire Department of Environmental Services. The recent study prepared by Emery & Garrett Groundwater, Inc. advised that the land immediately across the river from the well fields in Concord should be included in the proposed Aquifer Protection District.

He reported that the site development includes paved access area and haul roads, paved stockpile areas for aggregate, two 30,000 gallon liquid asphalt storage tanks with secondary containment, one 20,000 gallon fuel oil tank with required secondary containment, scales and scale house, various pieces of processing/mixing equipment, three storage silos, stacking conveyors, a 480- square foot control house building, 1,200-square foot lab building, and a 324-square foot shed.

He reported that the applicant has indicated that the haul road would be paved. Although the application does not clarify that the haul road would be paved in Concord, it is possible that the road would be paved. The paving of the haul road in Concord would trigger site plan review due to the amount of impervious surface being added to the site. If the Special Exception is approved, Continental Paving would need to submit site plan applications to the City of Concord for the haul road improvements and to the Town of Pembroke for the site development.

He reported that the issues related to this proposal are very similar to the concerns raised during the discussion of the expansion of the gravel pit operation, including the protection of the quality of the public water supply drawn from the City's well field; the traffic implications of continued access and egress through Concord to Route 106 and the potential paving of the haul road in Concord; the zoning implications of the change of use of the gravel pit haul roads in Concord in terms of serving as the sole access to the asphalt plant, which is a new land use, and one that would not be permitted in Concord; the land use and economic implications of long term usage of the haul roads for trucking of asphalt through a site planned for commercial redevelopment; and the reclamation of the Concord excavation to facilitate the redevelopment of the site and restoration of the vegetative buffer along the Soucook River.

Mr. Woodward reported that the General Services Department recommended retaining an expert to determine the extent of the impact the proposal would have on the Concord well fields and aquifer, which was also done during the review of the gravel pit expansion. The staff at the New Hampshire Department of Environmental Services has advised Planning staff that the batch petroleum asphalt plant would be considered an allowed use within the wellhead protection area, provided Best Management Practices are implemented.

Even though Continental Paving will no longer need to transport material from the gravel pit to the plant on Ricker Road in Pembroke, the asphalt products will be sold throughout the region, and there is the potential for an increase in the truck traffic onto

Route 106. The applicant has indicated that if the plant were not allowed on the site of the gravel pit, then the current plant on Ricker Road would be expanded, and the material excavated from the Pembroke site would be trucked out through the Concord site to the Ricker Road plant, and asphalt deliveries made from that plant.

He reported that the majority of the Concord site is located in the Gateway Performance District, (a portion is in the Residential Open Space (RO) District that is subject to the Shoreland Protection (SP) Overlay District) and the continued use of the haul road through the Concord site to Route 106 may limit the future redevelopment of the site. The Town of Pembroke should consider pursuing the replacement of the North Pembroke Road Bridge. The conceptual layout of the asphalt plant does not provide a driveway connection to North Pembroke Road and the sole access to this plant is over a temporary bridge structure over the Soucook River. There are other uses along North Pembroke Road that would benefit from the replacement of the bridge over the Soucook River.

The new industrial use on the Pembroke property substantially changes the nature of the haul road to a commercial driveway through Concord to Route 106. In addition to the trips generated by the asphalt plant, the Pembroke site has been approved for additional excavation, which will add to the traffic exiting and entering the site from Concord onto Route 106. The Concord Zoning Administrator has determined the driveway and trucking to be ancillary to the asphalt plant, which is a new industrial use and one that would not be permitted in the Gateway Performance District or the Shoreland Protection (SP) District. Continental Paving will need to seek variances from Concord Zoning Board of Adjustment to allow the driveway and traffic related to the asphalt plant to pass through land in Concord in the Gateway Performance District to reach the plant site in Pembroke.

Mr. Woodward reported that the Planning Division had also conferred with the City's groundwater consultants who advised that while the State would allow an asphalt plant within the wellhead protection area of the City's well field subject to Best Management Practices, such a use is a threat to groundwater quality as it includes storage and handling of liquid asphalt, and the storage and handling of fuel oil, as well as the actual process of making the asphalt.

Mr. Gross moved that the Planning Board recommend to the Pembroke Zoning Board of Adjustment that the Special Exception for the asphalt plant be denied specifically within the wellhead protection area for the City's well field, indicating that any spills or accidents that may occur, in spite of all precautions and adherence to Best Management Practices, will have a substantial adverse impact on the City's public water supply. The applicant has advised the City that should the plant not be able to be located on the excavation site, they will seek to expand the existing plant on Ricker Road in Pembroke. The Ricker Road site is remote from the City's wellhead protection area and as such represents a less threatening location relative to the safety of the wellfield.

He further moved that the Planning Board advise the Pembroke ZBA that variances will be required from the Concord Zoning Board of Adjustment for the access to the

proposed asphalt plant through the gravel pit in Concord. Concord's Zoning Administrator has ruled that the driveways and truck access are accessory to the asphalt plant as a principal use, and as such, are not part of the grandfathered gravel pit operation in Concord, and would not be permitted as a new use in the current zoning districts governing the gravel pit parcel located between Route 106 and the Soucook River. The gravel pit in Concord is ready for reclamation and has been designated for commercial redevelopment in the City's Master Plan and zoned accordingly, inclusive of a local Shoreland Protection Overlay District along the banks of the Soucook River.

He moved that the Planning Board, pursuant to the criteria for Special Exceptions as contained in Section 143-113 of the Pembroke Zoning Ordinance, further advise the Pembroke ZBA that the proposed use will be detrimental to the health and general welfare (criteria C), the use is in an inappropriate location and will adversely affect adjacent property (criteria D), both undue traffic and unreasonable hazard will result (criteria F), and there is a valid objection from an abutting property owner based on demonstrable fact (criteria H).

Mr. Shurtleff seconded. Motion carried.

The Clerk reminded the Board of the special meeting on August 25, 2010 at 7:00 PM in the City Council Chamber to deliberate on the comments heard at the public hearing relative to the proposals by the Concord School District.

There was no further business to come before the Board and the meeting was adjourned at 9:55 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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